

CITY OF BURIEN, WASHINGTON

ORDINANCE NO. 606

AN ORDINANCE OF THE CITY OF BURIEN, WASHINGTON, ADOPTING CHAPTER 9.125 OF THE BURIEN MUNICIPAL CODE, RELATED TO TRESPASS WARNINGS ON CITY AND OTHER PUBLICLY OWNED PROPERTY.

WHEREAS, there is a demonstrated need for the City to adopt a legally sound process for being able to exclude from City and other publicly owned property individuals whose behavior is dangerous, unsafe, illegal, or unreasonably disruptive to other users; and

WHEREAS, the City recognizes that members of the public have legitimate interests and rights regarding the use and enjoyment of City and other publicly owned property, as well as certain rights protected by the United States Constitution and the Washington State Constitution and laws, including, but not limited to, the right to petition the government, the right to assembly, and the right to access sources of information; and

WHEREAS, the City desires to provide a specific method for the issuance of trespass warnings to such individuals, including placing limitations on trespass warnings and providing procedures for such individuals to promptly appeal the issuance of trespass warnings; and

WHEREAS, the City recognizes the need to cooperate with other owners of publicly owned property in the implementation of this ordinance; and

WHEREAS, this ordinance is enacted as an exercise of the City's authority to protect and preserve the public health, safety and welfare, while recognizing the rights of individuals to engage in legitimate activities that may occur on City and other publicly owned property;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURIEN, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. BMC Chapter 9.125. Chapter 9.125 of the Burien Municipal Code is hereby adopted to read as follows:

Chapter 9.125

TRESPASS WARNINGS ON CITY AND OTHER PUBLICLY OWNED PROPERTY

9.125.010 Purpose, authority, and applicability.

(1) The purpose of this Chapter is to adopt a legally sound process for being able to exclude from City and other publicly owned property individuals whose behavior is dangerous, unsafe, illegal, or

unreasonably disruptive to other users. It is further the purpose of this Chapter to provide for a specific method to allow for the issuance of trespass warnings to such individuals, including placing limitations on trespass warnings and providing procedures for such individuals to promptly appeal the issuance of trespass warnings in order to protect their right to engage in legitimate activities protected by the state and federal constitutions.

(2) This Chapter is enacted as an exercise of the City's authority to protect and preserve the public health, safety and welfare.

(3) This Chapter shall apply to all City and other publicly owned property in the City of Burien, including property that public entities own in common with each other.

(4) The City Manager is hereby authorized and directed to promulgate rules and regulations defining and describing the types of conduct on or within City owned property that is considered to be dangerous, unsafe, illegal, or unreasonably disruptive to other users of such property for the purpose of this Chapter. The City Manager is further authorized and directed to cooperate with and/or assist other owners of publicly owned property in promulgating such rules and regulations for property that is under their control or that is owned in common with another public entity.

9.125.015 Definitions.

(1) Behavior that is "dangerous" is behavior that creates an imminent and unreasonable risk of injury or harm to either persons or property of another or the actor.

(2) Behavior that is "unsafe" is behavior that creates an unreasonable risk of injury or harm to either persons or property of another or the actor.

(3) Behavior that is "illegal" is behavior that is prohibited by the laws of the United States, Washington State, King County, or the City of Burien and that includes, but is not limited to, any of the following types of behavior:

- (a) Threatening another person by communicating either directly or indirectly to another person the intent to cause bodily injury in the future to the person threatened or to any other person, or
- (b) Selling or using alcohol or drugs, or
- (c) Threatening or harassing behavior (e.g. fighting or threatening to fight, brandishing a weapon, stalking, verbally threatening to harm others or their property), or
- (d) Assaulting staff or other patrons, or
- (e) Sexual misconduct or harassment (e.g. indecent exposure, offensive touching, sexual acts).

(4) Behavior that is "unreasonably disruptive to other users" is behavior that is not constitutionally protected and that unreasonably interferes with others' use and enjoyment of publicly owned property. Behavior that is unreasonably disruptive to others, includes, but is not limited to, any of the following:

- (a) Use of unreasonably hostile or aggressive language or gestures, or
- (b) Unreasonably loud vocal expression or unreasonably boisterous physical behavior, or
- (c) Using electronic or other communication devices in a manner that is unreasonably disruptive to others, or
- (d) Wearing insufficient clothing for the location's use (e.g. no top, no bottom, no shoes), or

- (e) Bodily hygiene or scent that is unreasonably offensive to others, or
- (f) Unreasonably interfering with the free passage of staff or patrons in or on public property, or
- (g) Behavior that is unreasonably inconsistent with the normal use for which the publicly owned property was designed and intended to be used(e.g. bathing, shaving, or washing clothes in a public bathroom or skateboarding in a public parking area or plaza).

5. Any constitutionally protected action or speech is excluded from the prohibited behavior listed in this section.

9.125.020 Trespass warnings on City and other property generally open to the public.

(1) Officers of the Burien Police Department shall be empowered to issue a trespass warning to any individual who violates any City ordinance, State statute, or government rule or regulation relating to conduct that is dangerous, unsafe, illegal, or unreasonably disruptive to other users of public property as defined in BMC 9.125.015, while such individual is on or within any City or other publicly owned facility, building, or outdoor area that is open to the general public, as more specifically set forth in BMC 9.125.010(3).

(2) Trespass warnings may be delivered in person to the offender or by first class mail to the offender at the offender's last known address.

(3) The offender need not be charged, tried, or convicted of any crime or infraction in order for the trespass warning to be issued or be effective. The warning may be based upon observation by a police officer or a City or other government employee or may be based upon a civilian report that would ordinarily be relied upon by police officers in the determination of probable cause.

(4) If the offender:

(a) Has not been excluded from City or other publicly owned property by a trespass warning issued within one year prior to the violation, then the warning may exclude the offender for a period not exceeding seven days from the date of the warning.

(b) Has been the subject of only one prior trespass warning issued within one year prior to the current violation, then the warning may exclude the offender for a period of more than seven days but not more than ninety days from the date of the current warning.

(c) Has been the subject of two or more prior trespass warnings issued within one year prior to the current violation, then the warning may exclude the offender for a period of more than ninety days but not more than one year from the date of the current warning.

(5) The trespass warning shall be in writing, shall contain the date of issuance, shall describe the behavior that is the basis for the trespass warning, shall specify the length and place(s) of exclusion, shall be signed by the issuing police officer, and shall state the consequences for failure to comply. A trespass warning for a place or places shall not prohibit access to another place or places.

(6) For good cause shown by the offender, the city manager or other government official who is responsible for the property in question may rescind, shorten or modify a trespass warning issued for a period not exceeding seven days.

(7) An alleged offender receiving a trespass warning for a period longer than seven days may seek a hearing to have the trespass warning rescinded, the period of exclusion shortened, or the areas of exclusion reduced. The hearing examiner shall be the City's Hearing Examiner, unless the City designates another person as the hearing examiner. The request for a hearing shall be delivered to the City's Legal Department, 400 SW 152 Street, Burien, WA 98166, and shall be postmarked no

later than fifteen days after the issuance date of the trespass warning. The request for hearing shall be in writing and shall be accompanied by a copy of the trespass warning on which the hearing is sought. Such requests shall be forwarded by the Legal Department to the hearing examiner. The hearing should occur within thirty days after the Legal Department receives the request for hearing or as soon as reasonably practicable. Hearings will be conducted upon written request only. The alleged offender shall have the right to engage an attorney and/or to bring a court reporter, at the alleged offender's own expense.

(8) At the hearing, the violation must be proved by a preponderance of the evidence in order to uphold the trespass warning. The hearing examiner shall consider a sworn report or declaration from the officer who issued the trespass warning or upon whose observation the trespass warning was based, without further evidentiary foundation, as prima facie evidence that the offender committed the violation as described. The hearing examiner may consider information that would not be admissible under the evidence rules in a court of law but that the hearing examiner considers relevant and trustworthy. If the warning was issued because of the alleged violation of any criminal law, the offender need not be charged, tried, or convicted for the warning to be upheld.

(9) If the violation is proved, the trespass warning shall be upheld, but upon good cause shown the hearing examiner may shorten the duration of the exclusion or reduce the areas covered by the exclusion. If the violation is not proved by a preponderance of the evidence, the hearing examiner shall rescind the exclusion. If the hearing examiner rescinds an exclusion, the exclusion shall not be considered a prior trespass warning for purposes of subsection (4) of this section.

(10) The decision of the hearing examiner is final. An offender seeking judicial review of the hearing examiner's decision must file an application for a writ of review in the King County superior court within fifteen days of the date of that decision.

(11) The trespass warning shall remain in effect during the pendency of any administrative or judicial proceeding.

(12) No determination of facts made by the hearing examiner shall have any collateral estoppel effect on a subsequent criminal prosecution or civil proceeding and shall not preclude litigation of those same facts in a subsequent criminal prosecution or civil proceeding.

(13) This section shall be enforced so as to emphasize voluntary compliance with laws and City (or other governmental entity) property rules and so that inadvertent minor violations that would fall under subsection (4)(a) of this section can be corrected without resort to a trespass warning.

(14) Any person, who is found on City or other publicly owned property in violation of a trespass warning issued in accordance with this Chapter for a period longer than seven days and who accordingly has had the right to a hearing regarding the trespass warning, may be arrested for trespassing, except as otherwise provided in Subsection (15) below.

(15) The Chief of Police or his/her designee may upon request authorize an individual who has received a trespass warning in accordance with this Chapter to enter City or other publicly owned property to exercise his or her First Amendment rights or to conduct government business, if there is no other reasonable alternative location to exercise such rights or conduct such business. Such authorization must be in writing and specify the duration of the authorization and any conditions thereof.

Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be preempted by state or

federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other households or circumstances.

Section 3. Effective Date. This ordinance or a summary thereof shall be published in the official newspaper of the City and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 18TH DAY OF AUGUST, 2014, AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS 18TH DAY OF AUGUST, 2014.

CITY OF BURIEN

/s/ Lucy Krakowiak, Mayor

ATTEST/AUTHENTICATED:

/s/ Monica Lusk, City Clerk

Approved as to form:

/s/ Craig D. Knutson, City Attorney

Filed with the City Clerk: August 18, 2014

Passed by the City Council: August 18, 2014

Ordinance No. 606

Date of Publication: August 21, 2014